

## REMARKS

This Amendment is submitted in reply to the Non-Final Office Action dated March 29, 2010. The Office Action provided a three-month shortened statutory period in which to respond, ending on June 29, 2010. Accordingly, this amendment is timely submitted. No fees are believed due with this Amendment. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 50-4498 in the name of Nestle Nutrition.

Claims 12, 13, 16-21, 24 and 27-31 are currently pending. Claims 1-11, 14-15, 22-23 and 25-26 were previously cancelled without prejudice or disclaimer, and Claim 27 was previously withdrawn from consideration. In the Office Action, Claims 12-13, 16-21 and 28-31 are rejected under 35 U.S.C. §103. Applicant does not acquiesce in the correctness of the rejections or objections and reserves the right to present specific arguments regarding any rejected or objected-to claims not specifically addressed. Further, Applicant reserves the right to pursue the full scope of the subject matter of the claims in a subsequent patent application that claims priority to the instant application.

In response, Claims 12-13, 16, 18-19, 28 and 29 have been amended. These amendments do not add new matter. The amendments are supported in the specification at, for example, page 1, line 20-page 2, line 17. In view of the amendments and/or for the reasons set forth below, Applicant respectfully submits that the rejections should be reconsidered and withdrawn.

Applicant notes that the Patent Office states that "Claim 24 is seen to be allowable." See, Office Action, page 11, line 18. Applicant has amended independent Claims 12, 16, 18, 19, 28 and 29 to recite the limitations of Claim 24, i.e., compositions having certain amounts of methyl alpha manno-oligosaccharides. The amendments do not add new matter and are supported in the specification at, for example, page 1, line 20-page 2, line 17; page 9, lines 1-8. Accordingly, Applicant respectfully submits that independent Claims 12, 16, 18, 19, 24, 18 and 29, and the dependent claims that depend therefrom, are novel and nonobvious in view of the prior art and are now in position for allowance.

For at least these reasons, Applicant submits that the cited references fail to disclose or suggest each and every element of the present claims.

Accordingly, Applicant respectfully requests that the rejection of Claims 12-13, 16-21 and 28-30 under 35 U.S.C. §103 be reconsidered and withdrawn.

In the Office Action, Claim 31 is rejected under 35 U.S.C. §103(a) as being unpatentable over “Chitosan oligosaccharides, dp 2-8, have prebiotic effect on the *Bifidobacterium bifidum* and *Lactobacillus* sp.” to Lee et al. (“*Lee*”) in view of U.S. Patent No. 6,399,124 to Lesens et al. (“*Lesens*”). Currently amended independent Claim 31 recites, in part, a method comprising administering to said mammal a composition comprising a therapeutically effective amount of caseinoglycomacropeptides (CGMP), wherein the composition comprises a caloric content of less than about 1000 kcal. In an embodiment, the present method includes administration of a low calorie meal replacement or other nutritional product. In the case of a meal replacement or other nutritional product, the composition administered may be low fat. As such, suitable low calorie, low fat products may include, for example, juices, smoothies, and other foods. See, specification, page 10, line 29-page 11, line 2. Applicant respectfully submits that *Lee* and *Lesens* are deficient with respect to the present claims.

For example, *Lee* and *Lesens* fail to disclose or suggest a method comprising administering to said mammal a composition comprising a therapeutically effective amount of caseinoglycomacropeptides (CGMP), wherein the composition comprises a caloric content of less than about 1000 kcal as required, in part, by independent Claim 31. Instead, *Lee* is entirely directed to *in vitro* testing of chitosan oligosaccharides and its growth stimulatory effect on bacteria. See, *Lee*, Abstract; Section 2 Methods and Materials. Further, *Lesens* is entirely directed to a frozen dessert based on an ice cream containing lactic acid bacteria and having a coating thereon. See, *Lesens*, Abstract. For at least the reasons set forth above, Applicant submits that the cited references fail to disclose or suggest each and every element of the present claims. Thus, Applicant submits that Claim 31 is novel, nonobvious and distinguishable over the cited references.

Accordingly, Applicant respectfully requests that the rejection of Claim 31 under 35 U.S.C. §103 be reconsidered and withdrawn.

For the foregoing reasons, Applicant respectfully requests reconsideration of the above-identified patent application and earnestly requests an early allowance of the same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

Nestlé HealthCare Nutrition  
12 Vreeland Road, 2<sup>nd</sup> Floor  
Florham Park, NJ 07932  
(973) 593-7553

By:                     /gml/                      
Gary M. Lobel  
Attorney for Applicant  
Reg. No. 51,155

Dated: May 6, 2010